

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-010369

11/20/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

H & B ELECTRIC INC

AARON KIZER

v.

STATE OF ARIZONA REGISTRAR OF
CONTRACTOR

MONA S PEUGH-BASKIN

AZ REGISTRAR OF CONTRACTORS
OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

This Court has jurisdiction of this administrative appeal pursuant to the Administrative Review Act, A.R.S. § 12-901, et seq. and A.R.S. § 32-1157(A). This case has been under advisement and the Court has considered and reviewed the record of the proceedings before the Arizona Registrar of Contractors (“Registrar”) and the Office of Administrative Hearings (“OAH”) and the memoranda submitted by counsel.¹

1. Factual and procedural background

Plaintiff seeks review of the Registrar’s decision revoking the contractor’s license of H & B Electric, Inc. (“H&B”) for its violation of A.R.S. § 32-1154(A)(21). The Registrar issued the license to Plaintiff on February 22, 1999. Plaintiff’s license application listed Robert Stephen

¹ This Court heard oral argument on this administrative review action on March 10, 2003. Thereafter, the Court discovered that the file did not contain the record of administrative proceedings. On April 28, 2003 and September 5, 2003, this Court issued orders to have the file corrected to include the record of administrative proceedings. On October 20, 2003, the record was completed and forwarded to this Court.

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Lloyd ("Lloyd") as president of the corporation and Anthony Orlando Womack ("Womack") as its qualifying party.²

On May 12, 1999, in a decision that is not subject to review in this action, the Registrar revoked the license held by T.O.W. Electric, Inc. ("TOW"). TOW's license application listed Womack as president and Lloyd as Secretary.³ Womack appeared as "resigned" as of December 17, 1998.⁴ The license was revoked following a compliance hearing on a complaint filed by Crown Technical Services, Inc. ("Crown"). The complaint alleged that TOW failed to pay for services rendered between 1997 and 1998.⁵

On December 11, 2001, the Registrar issued a Citation and Complaint to Plaintiff alleging a violation of A.R.S. § 32-1154(A)(21) because Plaintiff's license had persons appearing thereon, Womack and Lloyd, who also appeared on a revoked license.⁶ The administrative hearing took place on February 22, 2002, in the OAH. Womack and Lloyd appeared at the hearing. They did not dispute that their names were listed on both licenses.⁷ Womack and Lloyd testified that they each finalized a personal bankruptcy in October 1998.⁸ TOW did not go through bankruptcy.⁹

Following the hearing, the Administrative Law Judge ("ALJ") issued her Recommended Decision to revoke Plaintiff's contracting license, which the Registrar adopted in full.¹⁰ Plaintiff timely filed for a rehearing which the Registrar denied.¹¹ Plaintiff timely filed this administrative appeal.

Plaintiff contends that the Registrar was without jurisdiction to file the complaint against H&B because the complaint was not filed within two years of the violation and was therefore not filed within the two-year statute of limitations provided by A.R.S. § 32-1155.¹² The Registrar contends that the statute of limitations is not applicable to actions initiated by the Registrar. In its appeal in this action, Plaintiff contends that the Registrar was without authority to revoke its license because Lloyd and Womack went through personal bankruptcies and therefore were not responsible for TOW's debts.¹³ The Registrar contends that the personal bankruptcies of Lloyd

² Administrative Record, ("AR"), Tab 9.

³ ALJ Recommended Decision, February 27, 2002, Findings of Fact, ("ALJ Decision") ¶ 2.

⁴ Id.

⁵ Id.

⁶ ALJ Decision, Findings of Fact ¶ 3.

⁷ ALJ Decision, Findings of Fact, ¶ 4.

⁸ Id.

⁹ Id.

¹⁰ AR, Tab 14.

¹¹ AR, Tab 12.

¹² Correction to Plaintiff's Reply Brief, March 5, 2003. Plaintiff raised the statute of limitations argument for the first time in its Correction to Reply Brief in this action. Plaintiff is entitled to raise a jurisdictional issue for the first time in this action. *Rouse v. Scottsdale Unified Sch. Dist. No. 48*, 156 Ariz. 369, 752 P.2d 22, 24 (App. 1987).

¹³ Plaintiff's Opening Brief, October 21, 2002, page 2.

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and Womack are irrelevant to whether H&B had persons on its license who also appeared on a revoked license.

2. Standard of Review

The threshold issue in this case is whether the statute of limitations for filing a complaint with the Registrar applies to actions initiated by the Registrar. In addition, this case concerns the Registrar's application of the provision that prohibits a licensee from listing on its license persons who appear on a revoked license. On appeal of an administrative decision pursuant to the Administrative Review Act, the Superior Court determines whether the administrative action was supported by substantial evidence, was contrary to law, was arbitrary and capricious, or was an abuse of discretion.¹⁴ As to questions of fact, this court does not substitute its conclusion for that of the administrative agency, but reviews the record only to determine whether substantial evidence supports the agency's decision.¹⁵ Questions of statutory interpretation involve questions of law and the reviewing court is not bound by the administrative agency's conclusion.¹⁶ The reviewing court may draw its own conclusions as to whether the administrative agency erred in its interpretation and application of the law.¹⁷

3. Statute of Limitations

Arizona law provides that complaints filed with the Registrar must be filed within two years of the act which is cause for suspension or revocation of the license. A.R.S. § 32-1155(A) provides in pertinent part:

Upon the filing of written complaint with the registrar charging a licensee with the commission, within two years prior to the date of filing the complaint, of an act which is cause for suspension or revocation of the license, the registrar after investigation may issue a citation or upon written request of the complainant may issue a citation directing the licensee, . . . to appear by filing with the registrar his written answer to the complaint

The TOW license, with Lloyd and Womack listed on it, was revoked on May 12, 1999, after the Registrar issued a license to H&B. On December 11, 2001, the Registrar issued a Citation and Complaint to Plaintiff alleging a violation of A.R.S. § 32-1154(A)(21). The

¹⁴ A.R.S. § 12-910(G), *Siegel v. Arizona State Liquor Board*, 167 Ariz. 400, 401, 807 P.2d 1136 (App. 1991).

¹⁵ *Petrlas v. Arizona State Liquor Board*, 129 Ariz 449, 452, 631 P.2d 1107 (App. 1981).

¹⁶ *Seigal v. Arizona State Liquor Board*, supra.

¹⁷ *Carondelet Health Services v. Arizona Health Care Cost Containment System Administration*, 182 Ariz. 502, 504, 897 P.2d 1388 (App. 1995).

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Registrar initiated this action on his own motion, not through a written complaint filed by a member of the public. If the limitations provision is applicable to actions initiated by the Registrar and not by a complainant, the Registrar's action against H&B was untimely.

In construing statutes, this Court is guided by general principles of statutory construction which require that this Court construe a statute so as to effect the legislative intent and to promote justice.¹⁸ The statutory language provides the most reliable evidence of legislative intent.¹⁹ Courts will give terms their ordinary meaning unless the legislature has indicated otherwise.²⁰ The plain language of A.R.S. § 32-1155(A) refers to complaints filed with the Registrar, not to complaints filed by the Registrar. On its face, the limitation does not appear to apply to complaints filed by the Registrar. Other provisions of the regulatory scheme also differentiate between actions taken by the Registrar and complaints filed by members of the public.²¹ It appears that it is the public and not the Registrar that is restricted by the two year limitation for initiating complaints against contractors.

Statutes of limitations do not apply against the state when it acts in its character of a sovereign, in the absence of a statute specifically allowing such a defense.²² Here, the state, through the Registrar, acts in its character of a sovereign. Without a clear directive otherwise, the provisions should not be construed to limit the agency in its enforcement of the law. Moreover, even if the statute were construed to apply to actions initiated by the Registrar, there is a strong public policy against allowing the mistakes of an agency or employee to limit the government's ability to enforce its laws.²³ Finally, where the purpose of a regulation is to protect the public, the statute should be construed so as to uphold that purpose. The purpose of the regulation of contractors is to protect the public. "We further note that we should liberally construe a statute whose purpose is the protection of the public in order to achieve its objective."²⁴ Accordingly, this Court concludes that the Registrar's action against the H&B license was not barred by the statute of limitations.

¹⁸ A.R.S. § 1-211.

¹⁹ Matter of Maricopa County Juv. Action, 171 Ariz. 90, 93, 828 P.2d 1231, 1233 (App. 1991).

²⁰ Kessen v. Stewart, 195 Ariz. 488, 491, 990 P.2d 689, 692 (App. 1999).

²¹ A.R.S. § 32-1154(B) provides that the "registrar may on the registrar's own motion, and shall on the written complaint of any person, investigate the acts...."

²² Cajun Cable Company, Inc. v. Industrial Commission of Arizona, 156 Ariz. 590, 595, 754 P.2d 317, 322 (App. 1988).

²³ Lake Havasu City v. Arizona Dept. of Health Services, 202 Ariz. 549, 552, 48 P.3d 499, 502 (App. 2002) In that case, the Arizona court adopted the policy articulated by the United States Supreme Court in Brock v. Pierce County, 476 U.W. 253, 262, 106 S.Ct. 1834, (1986). Based on that policy, a United States Court of Appeals allowed the National Labor Relations Board to proceed with an enforcement action notwithstanding a six-year delay.

N.L.R.B. v. Hanna Boys Ctr., 940 F.2d 1295, 1299 (9th Cir. 1991).

²⁴ Better Homes Construction, Inc. v. Goldwater, 203 Ariz. 295, 300, 53 P.3d 1139, 1144 (App. 2002).

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4. Application of A.R.S. § 32-1154(21)

The Registrar revoked H&B's license because the license had persons named on it, Lloyd and Womack, who were named on another license, the TOW license, which was revoked. TOW's license was revoked after a compliance hearing on a complaint by Crown that TOW had not paid for services. Plaintiff contends that the Registrar was without authority to revoke its license because Lloyd and Womack went through personal bankruptcies and therefore were not responsible for TOW's debts.

Plaintiff makes two arguments in support of its contention. First, Plaintiff argues the Registrar could not revoke Plaintiff's license because Womack and Lloyd "are eligible to be relicensed" pursuant to A.R.S. § 32-1161(C).²⁵ That section provides that after revocation of a license, the license may be renewed or reissued upon satisfaction of certain conditions.²⁶ Plaintiff's reliance on the relicensing provisions of A.R.S. § 32-1161(C) is misplaced because Womack and Lloyd, as individuals, did not ever hold licenses. A.R.S. § 32-1161(C) is simply not applicable to the individuals. With respect to TOW, Plaintiff's argument is purely speculative because TOW did not seek to be relicensed. Moreover, nothing in the record suggests that TOW's debt to Crown was satisfied, a requirement of the relicensing provision.²⁷ The relicensing provision is irrelevant to the issue whether the Registrar properly revoked H&B's license.

Next, Plaintiff contends that the Registrar's action circumvents the bankruptcy laws because the Registrar "seeks to revoke the license of Womack and Lloyd although the debt for which the previous license has been revoked has been discharged."²⁸ However, the Registrar does not seek to revoke licenses held by the individuals. With respect to the license holder, TOW, according to the record, TOW has not filed bankruptcy.²⁹ The Registrar's action can hardly be seen to circumvent the effect of a bankruptcy that was not filed. The Registrar's action against H&B is based on its violation of law by having persons listed on its license who were also listed on another corporation's license that has been revoked. The ALJ found those facts to be true and indeed H&B did not dispute them. Nothing about the individual bankruptcies alters those findings of fact.

Plaintiff argues that the Registrar cannot require complete satisfaction of discharged debts prior to issuance of a contractor's license.³⁰ The Registrar has not done so. Plaintiff's

²⁵ Plaintiff's Opening Brief, October 21, 2002, page 2. "If these men applied for a contractor's license today, the ROC could not use the TOW revocation to deny them a license." "Mr. Womack and Mr. Lloyd meet the statutory conditions for reinstating the TOW Electric contractor's license or obtaining a new one."

²⁶ A.R.S. § 32-1161(C).

²⁷ ALJ Recommended Decision, Feb. 28, 2002, Findings of Fact, ¶¶ 4,5.

²⁸ Plaintiff's Opening Brief, page 2, 3.

²⁹ ALJ Decision, Findings of Fact, ¶4.

³⁰ Plaintiff's Opening Brief, page 2, citing *Kayetan v. License No. 37589*, 116 Ariz. 99, 567 P.2d 1228 (App. 1977). There, the Court held that the Registrar could not revoke a license for disciplinary action against a licensee solely for

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bankruptcy argument is contrary to the facts of the case and is not applicable to the action taken by the Registrar. In this case, the Registrar did not initiate proceedings against H&B because it had declared bankruptcy. It has not. The Registrar initiated proceedings because H&B was in violation of A.R.S. § 32-1154(A)(21). Plaintiff's contention is simply inapplicable to the Registrar's action in this case.

In a variation of its bankruptcy argument, Plaintiff contends that the Registrar "seeks to revoke the license of Tony Womack and Robert Lloyd although the debt for which the previous license has been revoked has been discharged."³¹ First, as I have noted previously, Womack and Lloyd are not licensed and cannot be the subject of any revocation. The only license at issue here is the license held by H&B. Second, nothing in the record suggests that the TOW debt has been discharged because TOW has not filed bankruptcy.³² The action by the Registrar is straightforward. The H&B license had persons listed on it both as the qualifying party and as an officer who also appeared on another license which was under revocation. The record in this proceeding supports the Registrar's action.

Plaintiff also argues that the Registrar had discretion to impose less severe sanctions for this violation.³³ The Registrar's action is supported by the record and that is the end of this Court's inquiry. This Court does not substitute its judgment for that of the administrative agency.³⁴

Finally, Plaintiff contends that the Registrar is estopped from acting to revoke H&B's license because it "waited 19 months after the revocation of TOW's license to issue a citation against H&B Electric."³⁵ Just as the statute of limitations does not apply to the Registrar's action, the Registrar is not estopped from taking action against H&B.³⁶ Moreover, Plaintiff does not assert any detrimental reliance and its argument for estoppel fails on that ground.³⁷

5. Conclusion

The plain language of the statute of limitations distinguishes between complaints filed by the public, and actions initiated by the Registrar. Statutes of limitations generally do not apply against the state when it acts to enforce its laws and strong public policy reasons auger against allowing even the mistake of an agency to limit the government in its enforcement role.

declaring bankruptcy. Plaintiff's reliance on *Kayetan* is misplaced because H&B, the license holder, is not sanctioned for having filed bankruptcy. It did not file bankruptcy.

³¹ Plaintiff's Opening Brief, page 2.

³² ALJ Decision, ¶ 4

³³ Plaintiff's Reply Brief, January 16, 2003, page 1,2.

³⁴ *Petrlas v. Arizona State Liquor Board*, 129 Ariz. at 452, 631 P.2d at 1110.

³⁵ Plaintiff's Reply Brief, page 3.

³⁶ *Lake Havasu City v. Arizona Dept. of Health Services*, 202 Ariz. 549, 552, 48 P.3d 499, 502.

³⁷ *Id.* "Equitable estoppel requires proof of reliance upon another's conduct to one's detriment."

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This Court concludes that the statute of limitations for complaints filed with the Registrar of Contractors does not apply to actions initiated by the Registrar and does not bar the action taken against H&B in this case. The Registrar's conclusion that H&B was in violation of A.R.S. § 32-1154(A)(21) for having on its license persons also listed on a license that is subject to revocation is supported by substantial evidence in the record of these proceedings and is not contrary to law.

IT IS THEREFORE ORDERED affirming the decision of the Registrar of Contractors in this case.

IT IS FURTHER ORDERED denying the relief as requested by the Plaintiff in its complaint.

IT IS FURTHER ORDERED that counsel for the Registrar shall lodge an order consistent with this opinion no later than December 17, 2003.